

**IN THE EFATE ISLAND COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil Case No. 29 of 2005.

**IN THE MATTER OF SECTION 19 OF THE
EFATE ISLAND COURTS ACT, CAP.167**

BETWEEN: FAMILY KALMET
Represented by Chief Andrew
Kalpoilep, Jack Kalmet and Lawa
Kalmetlau

Claimants

**AND: ERATAP Chiefs, Community mo
Area Council, Represented by
Thomas Tau, Chief Manfei, SILAS
Alban, Rene TAIN, ERICK Tau and
John Tau**

Defendants

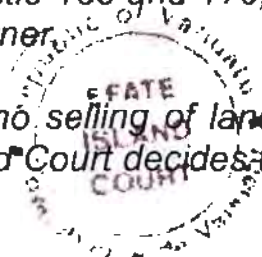
JUDGMENT

An application was filed in the office of Efate Island Court on 14/7/05 by the Claimants seeking warrant of Arrest to be issued by this Court for the Arrest of the defendants and be brought to Court and to show cause why they should not be committed to prison for failing to obey the orders of this Court issued on the 22nd of April 1994 and subsequently on the 7th of July, 2005.

Here are the orders of the Efate Island Court on the above dates:

I. 22nd April, 1994 Orders;

- (1) *That the defendants are restrained from further development of any kind on Land Title 168 and 170, until the Efate Island Court decides the true owner.*
- (2) *That there will be no selling of land within titles 168 and 170, until the Efate Island Court decides the true custom owner.*



- (3) *That there will be no receiving of royalties from any developers on Land Titles 168 and 170, until the Efate Island Court decides the true custom owner.*
- (4) *That the defendants not to allow any people from other Islands to move into Land titles 168 and 170, until the Efate Island Court decides the true custom owner.*

II. Orders of 7th July, 2005

1. *Olgeta defendants ia Chief Andrew Pakoa KALPOELEP mo Jack KALMETLAU Court ifaenem yutufala I guilty taem tufala ibreachim Orders 2, 3 mo 4 blong Court ia long namba 22nd April 1994 mo panisim yutufala blong ko long Kalabus blong 6 months mo suspendem blong 1 year.*
2. *Eratap Chiefs Community & Area Council represented by Chairman Thomas TAU Court ifaenem yu guilty taem yu breachim Order 3 blong Court Order blong namba 22nd April 1994 mo ordarem yu blong pem wan fine blong VT24.000 bifo 15th July 2005.*
3. *Start long today ol people we oli stap live long ol titles ia 168 mo 170 oli stop blong mekem any payments long any form blong money directly or indirectly iko long any Committees we iform long ol areas blong Teouma mo stop blong mekem payment tu iko long Chief Andrew Pakoa KALPOELEP, Jack KALMETLAU mo ol relatives mo families blong hem motu long Eratap Chiefs Community & Area Council until such time we Efate Island Court idecide long custom ownership blong kraon ia.*
4. *Order blong Court ia long namba 22nd April 1994 hemi still Effective until such time we Efate Island Court idecide long Customary ownership blong kraon ia.*

The Claimants claimed that defendants breached the above orders when on the 13th of July 2005 sold sand at Teouma Bay within titles 168 and 170.



Claimants claimed that the defendants shows no Respect to Island Court Orders when they continue to breached these orders.

In his sworn statement, Chief Andrew B. KALPOLLEP of Erapta said the defendants were breaching orders of this Court when they caused the activities that happened on the 13th of July, 2005. Below is Mr Andrew Sworn Statemen.

1. *I am the Paramount Chief of Kalmet Family and Eratap Village.*
2. *Kalmet Family is the original claimant in the dispute over those land from Teouma River to Rentapao River including all those land in title 168 and 170. The case is pending before the Efate Island Court for determination.*
3. *I confirm that on 7 July 2005 following application by the Respondents in Civil Case No.18 of 2005, the Efate Island Court found both myself and my brother Jack Kalmet and the Respondents particularly their chairman Thomas Tau guilty of breaching the terms of order of Efate Island Court issued on 22 April 1994. The Efate Island Court convicted both the Thomas Tau and myself and my brother Jack Kalmet and sentence us accordingly.*
4. *In breach of the orders of 22 April 1994 and the recent orders issued by the Efate Island Court on 7 July 2005, the Respondents on 13 July 2005 sold sand at Teouma Bay within title 168 and 170. Annexed herewith marked "ABK2" is a true copy of photos taken showing prove of sand that was sold by the Respondents.*
5. *In selling the sand at Teouma Bay, the Respondent shows no respect to orders of the Court especially when they continue to breach the order of Court six (6) days after their leader was found guilty for breaching the orders of 22 April 1994 and even before paying his fine imposed as penalty after being convicted on 7 July 2005.*



6. *Such attitude by the respondents hiding under the unincorporated association to break the orders of the Court should not be taken lightly and warrants a severe penalty to be imposed on them so as to punish and teach the Respondents that rule of law must be observed and prevail.*
7. *As the original claimant, my family is very concern that people who are not claimant in pending land case in relation to land from Teouma River to Rentapao River (old title 168 and 170) continue to benefit from royalties from our land by bypassing (breaking orders) of the Court while we are waiting for the Court to determine our genuine claim to the land.*
8. *I pray that the Efate Island Court sit to hear this application as matter of urgency considering the history of the case especially the Respondents continuous breach and ignorance of the orders of the Court despite the conviction entered by the Efate Island Court on 7 July 2005.*
9. *I ask that the Court imposed penalty (imprisonment) on the Respondents to punish them form further breaching the orders of the Court. This is to upheld the rule of law, which all citizen must respect at all times.*

Chief Andrew Pakoa Kalpoilep attached 6 different pictures as evidence to prove the activities taking place on the 13th of July, 2005. Pictures 1 –2 showing a machine (digger) digging sands. Pictures 3-6 shows a heavy machine (vehicle) transporting sands. In these photos, the date of 13/7/05 is printed on it.

The claimant produces 2 witness.

The witness named Michael Taun and Samuel Lano both gave evidences to the effect that they were in the beach taking pictures of the activities on the 13th of July, 2005.

DEFENSE

The defendant pleaded not guilty to the Application.



Thomas Tau, as the Chairman of Eratap Chiefs, Community and Area Council (E.C.C.A.C) asked the Court to reduce the names to the following people only (I) Thomas Tau (II) Chief Manfei (III) Silas Alban.

Following is the grounds of not guilty plea.

(a) Firstly Eratap Chiefs, Community mo Area Council emi no wan pati or claimant insaet long land area stat long Teouma river kasem Rantapau river emia long old titles 168/170. ECCAC emi from long purpose blong protektem mo defendem ol rights blong affeas mo royalties blong Eratap Village.

This argument fails. It has no stands to support the defendants.

Refer – civil case 85/94 – Eratap Land Committee verse Andrew Pakoa Kalpolep, Jack Kalmetlau and Law Kalmetlau.

(b) Emia emi first case we Eratap Chiefs, Community mo Area Council emi tekem akensem ol Complainant blong pruvum long Court ia se **ol Complainants oli stap misiusum ol risoses blong Eratap Village we Eratap Chief, Community & Area Council emi stap lukaotem.** Therefore long judgment blong 22nd April 1994 blong Civil Case No.85/94 Court ia emi mekem sam **specific orders** askensem ol Complainants an order ia emi **no mensem** eni ristriksen long Eratap Chiefs, Community mo Area Council blong ristriktem eni royalties long land blong Eratap Village.

This arguments fails. Order 2 and 3 of the this court on the 22nd of April, 1994 applies to all concerned, whether claimant or non claimant, all persons are bound by the order.

(c) Afta long Order blong Court ia long 22nd April 1994, Andrew Pakoa Kalpolep , Jack Kalmetlau and Lawa Kalmetlau oli **neva apil or mekem eni variesen blong order ia.** Therefore mifala



iprimum long Court ia se Court ikrandem applikesen ia long favor blong Eratap Chiefs, Community & Area Council.

This argument fails. Eratap Chiefs, Community and Area Council should not use this privilege to benefit the resources within the disputed land without the consents of all other claimants.

(d) Kraons ia emi primum long Court ia se Eratap Chiefs, Community mo Area Council emi rili gat konsen long ol affeas blong Eratap Village that's why emi mas tekem step blong mekem aplikesen long case No.85/94.

The application of the Eratap Chiefs, Community and Area Councils in civil Case No 85/94 shows their concerns on the use of disputed land, but should at all times abide by any order of the court to maintain peace.

(e) Eratap Chiefs, Community mo Area Council emi stap operate under long wan **Legal Quarry Permit** we Commissioner blong Mines, Mr Christopher Ioan emi issuem under long advaes blong Mr Tom Botleng blong State Law Office. Refer annex A(4) Wan Leta we Commissioner blong Mines mo State Law Office oli arrenjem wan miting blong itekem ples long Eratap Village Council House long 9:00 am emia long No.24 December 2003.

Legal Quarry Permit

- (a) Refer long document ia, content blong document ia emi specifaem clearly se;
- i. Commissioner emi kranded quarry permit iko long Eratap Community Council.
 - ii. Mo Council emi gat exclusive right blong extractem sand long Teouma Bay.
- (b) Eratap Community Council emi understand se legal quarry permit ia, Commissioner blong mines emi issuem afta carefully considarem Order blong 22nd April 1994, we Mr Tom Botleng



long state law offis emi advaes se commissioner emi mas issium quarry permit long Eratap Community Council.

- (c) From we Eratap Community Council emi stap operate under long wan legal quarry permit, Court ia emi no gat power blong diteminim se quarry permit emi stret or into stret. Supreme Court nomo emi gat right blong kaonselem wan legal permit olsem. Mi mekem reference long case No.87/98 Noel Takau verses Alfred Carlot & Others. Emia emi wan applikesen blong Supreme Court emi ractifaem ol leases we ol defendants oli applae from. An long case ia yet, process blong case iko kasem appeal court mo court I order se olgeta leases ia wei olgeta defendants oli obtainem oli kansel long kraons blong fraud mo mistake.

Witness John Tau is the only witness to the defense and gave evidence to the effect of the understanding on the Court orders. He testified that Only the Eratap Chiefs, Community and Area Council has the exclusive right to sell Sand within the Vicinity of the Teouma Bay as the Court Order is in their favor. The concerned council manage affairs for the interest of the people of Eratap who are parties to the dispute. He further mention that the first order of this court on the 22nd of April, 1999 was in favor of the defendants and that they have no restriction in selling sands at Teouma Bay. He further mention that all Royalties to this selling of Sand is held in a Government Trust account until such time when an owner is determined by this Court.

The Court having heard the application and the Responds filed by the defendants, the Court found the followings:

- (1) On the 13th of July, 2005 there is an Activity that happened at Teouma Bay as proved by the photos submitted to the Court which shows heavy machines removing and transporting sands.**
- (2) This Court made orders on two separate occasion on the 22nd of April 1994 and again on the 7th of July 2005 as mention earlier.**



(3) A legal Quarry permit was issued by the Dependant of Geology and mines on the 31st of December, 2004, some 10 years after first order of this Court on the 22nd of April, 1994.

(4) The same Quarry permit was suspended on the 18th of July, 2005 subject to specific order 3 of Civil Case No.18/05. Order 3 or Civil Case No.18/05 is just reinforcing order 2 and 3 of Civil Case No.85/94.

This court assumes that the Department of Geology and mines does not have the copies of the orders of 22nd April, 1994 when issuing the Quarry Permit License No. VA 25001. The court orders of 22nd April, 1994 should be respected and having been informed that a Suspension letter issued by the department of Geology and Mines dated 18th of July, 2005, it brings in light the understanding of the department of Geology and Mines that they knew nothing about the earlier orders of 22 April, 1994 and that the eventual suspension letter shows that the department is bound by any orders of the Court. The Court of Appeal in their judgment in Civil Case No 25 of 2004, (Jone Roqara & Leon Lalie -Vs- Noel Takau, Pakoa Andrew, Charkey Pakoa, Ben Saul) the Court of Appeal emphasis that "it must be emphasized that when any Court within this Republic makes a restraining Order, it must be respected by all those whose dealing might impringe upon its efficacy". It all falls in the hands of the Eratap Chiefs, Community and Area Council. It is their responsibility to informed the Department of Geology and Mines of the orders of this court. This courts assume the defendants gave total ignorance to the order when causing the Quarry permit to be issued and hiding behind this permit to continue breaching the restraining Orders.

(5) No evidence was produced to this court to proved there is Royalties held in Government Trust account for the interest of the claimants until such time the claimant is determined.



(6) There is evidence before this Court that all claimants did not give their consent before the department of Geology and mines issued the license No. VA 25001 to the defendants.

Having considered all the evidence, this Court found these defendants, Thomas Tau, Chief Manfei, and Silas Alban as members of Eratap Chief, Community and Area Council guilty and convict them respectively.


SENTENCING.

1. Defendant Thomas Tau has been found guilty 2 times for breaching order of this Court therefore he is hereby sentence to prison for a period of 5 months.
2. Defendants Chief Manfei and Silas Alban as members of Eratap Community and Area council committee are hereby sentence to Prison for a period of 4 Months.
3. Costs of VT 15,000 is awarded to Claimant and to be paid by the Defendants.
4. 30 days to appeal.

Dated at Port Vila this 20th of July, 2005.


.....
Justice Ann Kalo


.....
Justice Erick Mesau


.....
Justice Raymond Marongoe

